

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-481

FILED
CITY OF SEATTLE
05 JUL 15 PM 2:49
CITY CLERK

Seattle Rule 5-481 **Motor carriers—Trucking.**

- (1) **Introduction.** This rule provides an overview of the taxation of motor carriers and trucking activities within the City of Seattle as of July 1, 2002. For periods prior to July 1, 2002 a motor carrier may report their motor transportation revenue pursuant to RCW 35.21.840, pursuant to the provisions contained in this rule, or pursuant to the language contained in Seattle Rule 5-44-193D.
- (2) **Definitions.**
- (a) "Agent"—a person performing motor transportation service for another motor carrier under the other carrier's direction pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others. Agents may operate under their own operating authority or the operating authority of their principal.
 - (b) "Ancillary Activities"—activities conducted by the motor carrier that are not part of the contracted transportation charge, and include, but are not limited to, stevedoring, separately invoiced charges for loading, unloading, sorting, storage, and consolidation charges. If the contract between the shipper and motor carrier includes the requirement that the motor carrier pack, load, and store the property in addition to the transportation then those activities will be included as part of the motor transportation revenue, provided that any storage over one month will be deemed to be an ancillary activity charge whether or not the storage is part of the contract or invoiced separately.
 - (c) "Broker"—A person who sells, provides for, or arranges transportation by a motor carrier for compensation. A freight broker acts as a middle person in bringing a shipper and motor carrier together, for which they earn a commission or mark-up between the amount billed to the shipper and the amount paid to the motor carrier. A broker is not licensed to operate as a motor carrier. A broker does not generally transport or contractually incur the obligation to transport property themselves. However, a person who acts as a broker and also acts as a motor carrier must segregate these activities on their books of record and tax returns.
 - (d) "Freight Forwarder"—a person providing transportation of property on a for-hire basis and in the ordinary course of its business:
 - (i) assembles and consolidates shipments or provides for break-bulk and distribution operations of the shipments;
 - (ii) assumes responsibility for the transportation from the place of receipt to the place of destination; and
 - (iii) uses motor carriers for any part of the transportation services.
 - (e) "Motor carrier"—shall mean the carriers described in the definitions of "common carrier", and "contract carrier" as defined in RCW 81.80.010, providing transportation of property for hire over public highways. The term includes "agents", "freight forwarders" and "owner-operators" if they are under contract to haul property.

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- (f) "Owner-Operator"—a person that leases motor carrier equipment with operators to motor carriers under federal or state leasing rules pertaining to motor carriers. It does not include persons leasing motor carrier equipment without operators.
 - (g) "Picking up"—means taking the first initial possession of freight or property by the motor carrier. Transfers between agents, motor carriers, or freight forwarders constitutes a "pick up," whereas transfers between transportation equipment owned by the same motor carrier does not constitute a "pick up". Generally, "picking up" is the beginning of the transportation for that particular motor carrier. A motor carrier contracting with another as a subcontractor is "picking up" when it first takes possession of the freight or property.
 - (h) "Public highway"—every street, road, freeway or highway in the State of Washington.
- (3) **Measure of the tax on Motor Carriers of property for hire.** Persons engaged as a motor carrier within the City of Seattle are subject to tax pursuant to section 5.45.050(F) (motor carriers). The gross income of such person that is subject to tax shall be the gross income received from the transport of freight picked up in the City of Seattle, regardless of where the business was solicited, and regardless of whether the person has an office, terminal or place of business within the City.
- (4) **Taxing Authority.** The act of "picking up" property or freight within the City creates a "nexus" for taxation and requires the person to maintain a business license and report all applicable taxes.
- (5) **Measure of the tax on ancillary activities and commissions.** Motor carriers engaging in ancillary activities shall separately record and report the gross income from such activities under the "service and other" business tax classification (SMC 5.45.050(G)). Brokers earning commissions by arranging the transportation between the shipper and the motor carrier shall report those commissions under the service and other business tax classification. Gross income from ancillary activities and broker commissions are subject to the revenue assignment provisions contained in SMC sections 5.45.075 and 5.45.080.
- (6) **Exemptions and Deductions.**
- (a) Interstate Trucking. A deduction is allowed in the amount of the gross income received by a motor carrier from the transportation of property picked up within the City of Seattle and delivered by the motor carrier to a point outside the State of Washington. A motor carrier that does not transport the property across the state boundary is not entitled to a deduction, even though the freight is destined for, and is ultimately transported, outside Washington. The contract maintained by the motor carrier shall determine whether the haul is deductible. Such contract may be with a shipper, carrier, consolidator, logistics firm, or any other person or party, provided that the motor carrier is required to transport the freight to a location outside the state. Freight forwarders, agents, and owner-operators are eligible for this deduction where the requirements of this section are met. The fact that the goods themselves are being transported under an interstate "through bill of lading" will not suffice as proof that the carrier was responsible to transport the goods across Washington State boundaries. (See section (7) for document requirements to substantiate the interstate haul).
 - (b) Empty Containers as part of a round trip haul. In computing the tax imposed by SMC 5.45.050 (F) there may be deducted from the measure of the tax the amount of gross income from the transport of empty containers picked up in the City if 1) a loaded container transported from outside the City is exchanged for the empty container at the time of pick-up, and 2) the transport of the loaded container and empty container are billed to the customer as a round trip charge. Any charge for picking up and transporting an

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empty container that is not part of a round trip billing or represents a one-way haul of an empty container is subject to the motor carrier tax.

The intent of this subsection is to permit a deduction for empty containers consistent with the measure of the tax in section (3) above. This deduction is intended to apply where a driver picks up a loaded container outside the city, delivers it to a location inside the City, and picks up an empty for the return trip. The location of the delivery of the loaded container and pickup up of the empty need not be identical, but must be within the City. The location where the loaded container was picked up outside the City and the location of delivery of the empty container must also be within the same city or location, and both hauls (loaded and empty) billed as a round trip charge to the same customer.

- (c) Revenue from "pick ups" outside the City. All revenues generated by transportation or moving of property which is picked up outside the City and delivered within the City or elsewhere shall be excluded from the measure of the tax regardless of where the solicitation of the business activity took place.
- (7) **Documentation required for Exemptions and Deductions.** For each haul, the motor carrier (including agent or owner/operator) must maintain documentation showing the place of pick up and place of delivery for which the motor carrier is responsible. All forms substantiating the points of pick up and delivery, and whether or not the transportation was an interstate haul may be in paper or in electronic form. Such forms or documents must clearly substantiate where pick up occurred and, if the delivery was made to a point outside the state, that the motor carrier was required to transport the goods to the location outside the state. Valid documentation may include: billing documents, bills of lading, master agreements, price lists, shipping contracts, interchange receipts, delivery receipts, authorizations, work orders, interstate authority documentation, lease agreements and other documents showing the facts associated with the haul. Some of these documents, by themselves, will not be sufficient to prove an interstate deduction. The primary documents examined will be the invoice or billing document and the motor carrier's own bill of lading along with any contractual documents.
- (8) **Handling of solid waste, construction/demolition landfill (CDL) or garbage.** A person contracting to collect garbage, CDL, or solid waste (including any transportation, handling or processing of such material) is subject to the utility tax. A person that subcontracts with the "collector" to haul solid waste, CDL or garbage on behalf of the collector shall be deemed to be a motor carrier and subject to the business and occupation tax under the service and other classification for pick ups of such materials inside the City.
- (9) **Examples.** The following examples show how the above rule will be applied:
- (a) Barge Lines, Inc., who has a single terminal based in Seattle, contracts with a seller to haul freight from Seattle to Anchorage, Alaska. Barge Lines picks up the freight in Seattle with its own trucks and delivers the freight to Barge Lines' barge, which hauls the freight to Alaska. Neither the pick up leg nor the line haul is taxable, since Barge Lines is responsible for, and does take goods across state lines.
- (b) Same facts as example (a) above, except the pick up in Seattle is made by a trucking subsidiary of the Barge Lines. Subsidiary is taxable on the Seattle pick up leg since Subsidiary does not take the goods across state lines. Barge Lines is exempt, since separate entities are taxed on their own activities, not that of the parent or affiliated entity.
- (c) A motor carrier contracts to haul goods from Seattle to Alaska, invoices the seller, and issues a bill of lading showing these points. The motor carrier picks up the freight in Seattle and hauls it to an unrelated barge lines in Bellingham, who then hauls the goods to Alaska under a subcontract with the motor carrier. Since the motor carrier has

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contracted and is paid to haul the goods to Alaska, and the barge lines is acting as subcontractor to the motor carrier, then the motor carrier is taking the goods across the state lines and the interstate deduction applies to the motor carrier's revenues for the shipment.

- (d) A freight broker with a single office in Seattle arranges for transportation between various points in the country, including Seattle. The shippers and carriers are in different states. The broker's job is arranging the transportation; the broker does not issue a bill of lading. The broker collects the price of the move from the shipper, pays the carrier, and keeps the difference. The transportation broker is merely brokering the transportation activity and therefore is taxable on its commission income or the difference between contract price and transportation costs. The transportation broker may not use the interstate deduction since it is not a motor carrier. Transportation brokerage is a local activity. To the extent such activity takes place within Seattle, it is taxable under the service and other business tax classification. If the freight broker's only office was located outside Seattle, its gross revenues would not be taxable.
- (e) A freight forwarder with a terminal in Seattle contracts with, and invoices a shipper (seller) to haul a shipment to Los Angeles. The forwarder picks up the shipment in Seattle with its own truck, and hauls it to the forwarder's terminal. A subcontract carrier (another motor carrier, agent, or owner-operator) hauls it to Los Angeles. The freight forwarder and the subcontract carrier are not taxable since both are contractually responsible for getting the shipment across state boundaries.
- (f) A full load motor carrier contracts to haul goods from Denver to Bellingham. The carrier hauls the load from Denver to Seattle, where it is given to a subcontract carrier to haul from Seattle to Bellingham. The motor carrier is not taxable, but the subcontract carrier is taxable for the haul from Seattle to Bellingham.
- (g) ABC Household Goods Mover, who is an agent of XYZ Van Lines, executes a contract and bill of lading on behalf of XYZ with a Seattle homeowner to move the homeowner's household goods from Seattle to Phoenix. XYZ Van Lines is the motor carrier named in the bill of lading. ABC provides a van, loads the goods, and hauls them to ABC's warehouse in Washington. The goods are then picked up by an owner-operator of another agent of XYZ Van Lines, who hauls them to Phoenix. XYZ Van Lines is the motor carrier and receives the interstate deduction. ABC is taxable on its haul to the warehouse because it has not crossed, or contracted to cross, a state border.
- (h) Same facts as example (g) above, except ABC also hauls the goods from its warehouse to Phoenix with its own driver (employed or owner-operator). ABC is not taxable because it has transported the load across the border. An Owner-Operator driver would also not be taxable for the same reason.
- (i) A regional motor carrier contracts to pick up goods in Salt Lake City and deliver the goods to Vancouver, WA. The carrier hauls the goods to Seattle where they are transloaded into a delivery truck belonging to the regional motor carrier for delivery to Vancouver. The entire haul is not taxable because the freight was picked up in Salt Lake City and changes in equipment or intermediate stoppages and storage does not change the place of pick up as long as the goods are traveling under one invoice and one bill of lading by the same carrier.
- (j) A dump truck operator hauls excavated material from a construction site in Seattle to another construction site in Woodinville. The haul involves a transportation service, and a Seattle pick up, and is thus taxable. If the load had been picked up outside Seattle and delivered in Seattle, there would be no Seattle pick up and thus no tax.

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- (k) A motor carrier with a Seattle terminal or office picks up freight in Kent and hauls it to Everett. There is no tax because there is no Seattle pick up.
- (l) A regional, less-than-truckload, carrier contracts and invoices to haul a shipment from Seattle to Billings, Montana. It interlines (subcontracts) the shipment with another regional carrier in Spokane who then continues the shipment to Billings. Both carriers are not taxable because both have contracted to cross the border. The interline carrier contracts to cross the border when it agrees to transport the shipment from Spokane to Billings.
- (m) Same facts as example (l) above, except a national carrier is designated as the carrier on the bill of lading. (The national carrier is then presumed to be the entity that contracted to ship the goods from Seattle to Billings.) The national carrier then subcontracts with the two regional carriers. The originating regional carrier is taxable, because it has not contracted to cross the border (only from Seattle to Spokane). The second regional carrier is not taxable because it has contracted to haul the goods across the border, and also did not pick up the goods in Seattle.
- (n) A carrier picks up a loaded container at the Port of Seattle and drops it at a customer's location in Kent. The customer unloads the container and the next day the carrier picks it up and returns it to a container yard inside the Port of Seattle. The carrier bills the steamship lines for the round trip. The entire round trip charge is taxable because the pickup of the loaded container was made inside Seattle. It makes no difference who was billed, or that the empty container was picked up the day after the loaded container was delivered.
- (o) A carrier picks up an empty container at the Port of Seattle, hauls it to a customer's location in Tukwila, drops the empty, picks up a loaded container in Tukwila for the customer, and hauls it to the Port of Seattle. The carrier bills the customer for the round trip. The round trip is not taxable, because the loaded container was picked up outside Seattle. It makes no difference that the empty container was picked up in Seattle, because the empty and loaded containers were billed as a round trip.
- (p) Same facts as example (o) above, except the carrier invoices the customer separately for hauling the empty container and the loaded container. The revenue from transporting the loaded container is not taxable because the pickup occurred outside Seattle. The revenue from transporting the empty container is taxable because the pick up was inside Seattle and by invoicing separately it is presumed that the hauls were under separate contracts.
- (q) ABC trucking signs a contract with the Smiths to move their furniture from Seattle to Vancouver, WA. As part of the agreement the Smiths desire to move out of their present home and wait for three weeks before the furniture is delivered to their new home in Vancouver. The packing, loading, and three weeks of storage is part of the move and is taxed by Seattle under the Motor Carrier classification because the pick up took place in Seattle. If the Smiths were moving to Portland, OR then the entire contract amount is not taxable since the move is an interstate move and ABC was required to deliver the furniture outside the state. If the storage period were longer than one month, then the storage charges would be considered an ancillary charge and taxable under the "service and other" business tax classification.
- (r) XYZ trucking is located in Tukwila and contracts with the Smiths to pack, load, and store their property, while ABC trucking contracts to move the property. Since the packing and loading occur in Seattle, XYZ trucking is taxable under the "service and other" business

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tax classification on these ancillary activities. If the storage by XYZ takes place in Tukwila, the storage charges would not be subject to tax in Seattle. Since ABC trucking is still making the haul from Seattle to Vancouver via the storage warehouse, the haul would still be taxable in Seattle since pick up occurred in Seattle.

Effective: July 15, 2005

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DIRECTOR'S CERTIFICATION

I Kenneth J. Nakatsu, Director of the Department of Executive Administration of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Executive Administration.

DATED this 15th day of July, 2005.

CITY OF SEATTLE,
a Washington municipality

By:



Kenneth J. Nakatsu, Director
Department of Executive Administration

STATE OF WASHINGTON - KING COUNTY

--SS.

183390
CITY OF SEATTLE:Revenue &

No.

Affidavit of Publication

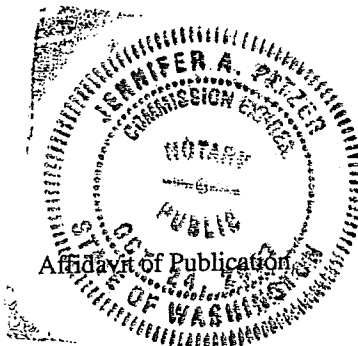
The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:RULE MAKING HEARING

was published on

3/21/2005



M. D. J.

Subscribed and sworn to before me on
3/21/2005 *Jennifer Prtzer*
Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

NOTICE OF PROPOSED RULE MAKING HEARING AND OPPORTUNITY TO COMMENT

The Director of Finance, acting under the authority of Seattle Municipal Code Chapters 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business and Occupation Tax Ordinance (Seattle Municipal Code, Chapter 5.45). Please note that although these rules are applicable to SMC 5.45, the individual rules may also apply to other chapters of the City's Tax Code, including, but not limited to, SMC 5.30 (Definitions), SMC 5.32 (Revenue Code), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax -- Utilities) and SMC 5.52 (Gambling Tax). The following rules are proposed for adoption and will become effective as of April 30, 2005:

Seattle Rule 5-006 -- Tax Returns --
Filing and Payment

Seattle Rule 5-007 -- Penalties

Seattle Rule 5-031 -- Measure of Tax --
Retailers and Wholesalers

Seattle Rule 5-032 -- Measure of Tax --
Service and other business activities

Seattle Rule 5-035 -- Freight and
Delivery Charges

Seattle Rule 5-040 -- Corporations,
Massachusetts trusts

Seattle Rule 5-043 -- Engaging in
Business

Seattle Rule 5-063 -- Returned goods,
allowances, cash discounts

Seattle Rule 5-100 -- Extracting natural
products

Seattle Rule 5-112 -- Commercial or
industrial use

Seattle Rule 5-127 -- Sales to and by the
State of Washington, counties, cities,
school districts, and municipal subdivi-
sions

Seattle Rule 5-130 -- Selling price --
Advertised prices including sales tax

Seattle Rule 5-131 -- Trade-ins, selling
price, sellers' tax measures

Seattle Rule 5-132 -- Leased depart-
ments

Seattle Rule 5-133 -- Warranties and
maintenance agreements

Seattle Rule 5-702 -- Coin operated
vending machines, amusement devices
and service machines

Seattle Rule 5-404 -- Sales of meals

Seattle Rule 5-405 -- Restaurants, cock-
tail bars, taverns and similar business-
es

Seattle Rule 5-481 -- Motor carriers --
Trucking

Seattle Rule 5-523 -- Sales of precious
metal bullion and monetized bullion

Seattle Rule 5-530 -- Sale or rental of
real estate, license to use real estate

Seattle Rule 5-531 -- Sales of real prop-
erty, standing timber, minerals, natural
resources

Seattle Rule 5-532 -- Real estate brokers
and salesman

Seattle Rule 5-600 -- Educational insti-
tutions, school districts, student organi-
zations, and private schools

Seattle Rule 5-700 -- Amusement,
Recreation, and Physical Fitness
Services

Seattle Rule 5-720 -- Hotels, motels,
boarding houses, rooming houses,
resorts, summer camps, trailer camps,
etc.

Seattle Rule 5-803 -- Consignees,
bailees, factors, agents, and auctioneers

Seattle Rule 5-806 -- Advertising agen-
cies

Seattle Rule 5-807 -- Outdoor advertis-
ing and advertising display services

PUBLIC HEARING AND COMMENT:
The Department of Executive Administra-
tion has scheduled a public hearing on the
proposed rule changes for 1:00 p.m. to 3:00
p.m., on Monday, April 4, 2005. The hearing
will be held in a conference room on the 40th
floor of the Seattle Municipal Tower, Suite
4096, located at 700 5th Avenue. All interest-
ed persons are invited to present data, views,
or arguments, with regard to the proposed
rules, orally at the hearing, or in writing at
or before the hearing.

Written comments should be mailed or
delivered to:

Department of Executive Adminis-
tration, Attn.: Mel McDonald,
Director, Revenue and Consumer
Affairs, 700 5th Avenue -- Suite 4250,
Seattle, Washington 98104-5020.

The public may inspect copies of the pro-
posed rules at the Revenue and Consumer
Affairs offices, 700 5th Avenue, Suite 4200.
If you would like a copy of the proposed rules,
please call (206) 684-8300, FAX (206) 684-
5170, email rca.bizlctr@ci.seattle.wa.us,
or submit a written request to the address
above.

Dated: March 21, 2005.

DWIGHT D. DIVELY,

Director, Department of Finance.

Date of publication in the Seattle Daily
Journal of Commerce, March 21, 2005.

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